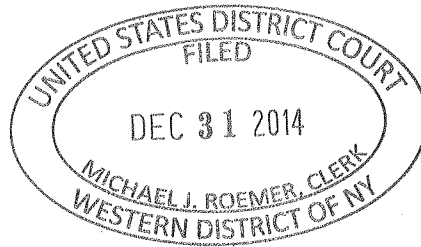


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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-PS/CD-O-

DENNIS BROWNING,

Petitioner,

-v-

STATE OF NEW YORK,

Respondent.

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**DECISION and ORDER**  
**14-CV-0831A**

*Pro se* petitioner Dennis Browning, an inmate of the Gouverneur Correctional Facility, seeks relief pursuant to 28 U.S.C. § 2254, alleging that his conviction in Erie County Court, State of New York, was unconstitutionally obtained.

By Order dated November 4, 2014 (Docket No. 3), petitioner was directed to provide additional information to allow the Court to determine if he had exhausted his state court remedies as required on habeas petitions by 28 U.S.C. § 2254(b)(1)(A).

Petitioner filed a response to the Order (Docket No. 5) and an amended petition (Docket No. 4). Petitioner states that he is waiving his unexhausted claim for denial of effective assistance of counsel (Docket No. 5 at 1-2). Petitioner requests to proceed only on the exhausted claims, as indicated in his amended petition (*id.*).

In the amended petition, petitioner has failed to identify a proper respondent. Petitioner has named New York State as respondent (Docket No. 4 at 1). The correct respondent for a § 2254 habeas proceeding is the name of the authorized *individual* having custody of the petitioner. 28 U.S.C. § 2243. Given that petitioner is incarcerated in the Gouverneur Correctional Facility, the correct respondent would be the Superintendent of

the Gouverneur Correctional Facility. In light of petitioner's *pro se* status and the fact that this in no way will prejudice respondent, and in the interests of court efficiency, the Court will deem the petition amended to change the name of respondent to the Superintendent of the Gouverneur Correctional Facility.

Accordingly,

IT HEREBY IS ORDERED as follows:

1. Respondent shall file and serve an **answer** to the amended petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **ninety (90) days** after entry of this Order. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the amended petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this Order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in Court at issue now before this Court shall submit such records to respondent or the respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within thirty (30) days of the date this Order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the amended petition, accompanied by appropriate exhibits which demonstrate that an answer to the amended petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

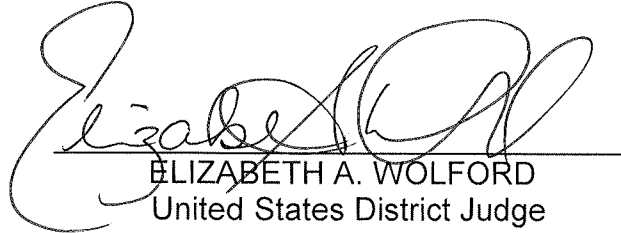
2. The Clerk of Court shall serve a copy of the amended petition (Docket No. 4), together with a copy of petitioner's response to the Court's order to show cause regarding exhaustion (Docket No. 5) and a copy of this Order, electronically via a Notice of Electronic Filing to Donna Milling at of the Office of the District Attorney of Erie County <[Appeals-DAO@erie.gov](mailto:Appeals-DAO@erie.gov)>.

3. The Clerk of the Court is directed to terminate State of New York as respondent, add the Superintendent of the Gouverneur Correctional Facility as the new respondent, and revise the caption of this action accordingly.

PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND  
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT.

SO ORDERED

Dated: December 31, 2014  
Rochester, New York



ELIZABETH A. WOLFORD  
United States District Judge